

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARKEISHA D. SPRIGGS,

Plaintiff,

V.

UNITED STATES POSTAL SERVICE
and MEGAN J. BRENNAN, Postmaster
General,

Defendants.



No. 3:20-cv-961-M-BN

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Markeisha D. Spriggs, employed as a postal worker, filed a *pro se* discrimination action against the United States Postal Service. *See* Dkt. No. 3.

Her case has been referred to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b) and a standing order of reference from Chief Judge Barbara M. G. Lynn. And the Court granted Spriggs leave to proceed *in forma pauperis* on April 21, 2020. See Dkt. No. 6.

The same day, the Court entered an order noting that,

[b]ecause Spriggs's complaint as filed includes no factual allegations, the Court enter this notice of deficiency, requiring that file by May 22, 2020 an amended complaint using the form complaint for employment discrimination attached to this order. The factual allegations to be included in this amended complaint must comply with the pleading standards set out below.

And if Spriggs does not comply with this order, the undersigned will recommend that this action be dismissed without prejudice under 28 U.S.C. § 1915(e)(2)(B) and/or Federal Rule of Civil Procedure 41(b).

Under Federal Rule of Civil Procedure 8(a)(2), a complaint need not contain detailed factual allegations, but a plaintiff must allege more than labels and conclusions, and, while a court must accept all of the

plaintiff's allegations as true, it is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

A threadbare or formulaic recitation of the elements of a cause of action, supported by mere conclusory statements, will not suffice. *See id.* But, to survive dismissal under *Twombly* and *Iqbal*, a plaintiff need only “plead facts sufficient to show” that the claims asserted have “substantive plausibility” by stating “simply, concisely, and directly events” that a plaintiff contends entitle him or her to relief. *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 12 (2014) (per curiam) (citing FED. R. CIV. P. 8(a)(2)-(3), (d)(1), (e)); *see also Inclusive Communities Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 899 (5th Cir. 2019) (“Determining whether a complaint states a plausible claim for relief is ‘a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.’” (quoting *Iqbal*, 556 U.S. at 679; citing *Robbins v. Oklahoma*, 519 F.3d 1242, 1248 (10th Cir. 2008) (“[T]he degree of specificity necessary to establish plausibility and fair notice, and therefore the need to include sufficient factual allegations, depends on context.”))).

And, because Spriggs appears to be asserting employment-discrimination-related claims, the Court further advises her that the *prima facie* elements of such a claim are – and thus she must allege – that she

(1) is a member of a protected group; (2) was qualified for the position at issue; (3) was discharged or suffered some adverse employment action by the employer; and (4) was replaced by someone outside his protected group or was treated less favorably than other similarly situated employees outside the protected group.

McCoy v. City of Shreveport, 492 F.3d 551, 556 (5th Cir. 2007) (citing *Wheeler v. BL Dev. Corp.*, 415 F.3d 399, 405 (5th Cir. 2005)).

Relatedly, “[i]n the retaliation context, a *prima facie* case requires a showing that (1) [the plaintiff] engaged in a protected activity pursuant to one of the statutes, (2) an adverse employment action occurred, and (3) there exists a causal link connecting the protected activity to the adverse employment action.” *Munoz v. Seton Healthcare, Inc.*, 557 F. App’x 314, 321 (5th Cir. 2014) (citation omitted).

Regarding such claims, the United States Court of Appeals for the Fifth Circuit has cautioned that a plaintiff need not make a showing of each prong of the *prima facie* test at the pleading stage. *See Raj v. La. State Univ.*, 714 F.3d 322, 331 (5th Cir. 2013) (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 510-12 (2002)). But *Raj* “does not exempt a plaintiff from alleging facts sufficient to establish the elements of her

claims.” *Meadows v. City of Crowley*, 731 F. App’x 317, 318 (5th Cir. 2018) (per curiam) (citing *Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 470 (5th Cir. 2016) (per curiam) (“Although [the plaintiff] did not have to submit evidence to establish a prima facie case of discrimination at [the motion to dismiss] stage, he had to plead sufficient facts on all of the ultimate elements of a disparate treatment claim to make his case plausible.” (citations omitted))).

The initial question for the Court, then, is whether Spriggs has provided sufficient facts to allege that she suffered actionable discrimination or retaliation in the workplace. *See Swierkiewicz*, 534 U.S. at 512-13. And, if she “has not pled such facts,” it is “proper[to] dismiss her complaint.” *Meadows*, 731 F. App’x at 318; *see also Cicalese v. Univ. of Tex. Med. Branch*, 924 F.3d 762, 766-67 (5th Cir. 2019) (noting that the district court’s “task is to identify the ultimate elements of [the applicable employment-related] claim and then determine whether the” plaintiff has pled those elements but that a “district court err[s if it] require[s a plaintiff] to plead something beyond those elements to survive a motion to dismiss”).

The same holds true as to any non-employment-discrimination claims Spriggs may assert, as it is her duty to provide factual content sufficient to demonstrate an entitlement to relief. *Compare Iqbal*, 556 U.S. at 678 (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”), *with Robbins*, 519 F.3d at 1247 (“The burden is on the plaintiff to frame a ‘complaint with enough factual matter (taken as true) to suggest’ that he or she is entitled to relief.” (quoting *Twombly*, 550 U.S. at 556)).

Dkt. No. 7 (emphasis omitted).

Now, more than three months past the deadline to file an amended complaint, Spriggs has failed to obey the Court’s order or otherwise contact the Court.

Federal Rule of Civil Procedure 41(b) “authorizes the district court to dismiss an action *sua sponte* for failure to prosecute or comply with a court order.” *Griggs v. S.G.E. Mgmt., L.L.C.*, 905 F.3d 835, 844 (5th Cir. 2018) (citing *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988) (per curiam)); *accord Nottingham v. Warden, Bill Clements Unit*, 837 F.3d 438, 440 (5th Cir. 2016) (failure to comply with a court order); *Rosin v. Thaler*, 450 F. App’x 383, 383-84 (5th Cir. 2011) (per curiam)

(failure to prosecute).

This authority “flows from the court’s inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)); *see also Lopez v. Ark. Cnty. Indep. Sch. Dist.*, 570 F.2d 541, 544 (5th Cir. 1978) (“Although [Rule 41(b)] is phrased in terms of dismissal on the motion of the defendant, it is clear that the power is inherent in the court and may be exercised sua sponte whenever necessary to ‘achieve the orderly and expeditious disposition of cases.’” (quoting *Link*, 370 U.S. at 631)).

The Court’s authority under Rule 41(b) is not diluted by a party proceeding *pro se*, as “[t]he right of self-representation does not exempt a party from compliance with relevant rules of procedural and substantive law.” *Wright v. LBA Hospitality*, 754 F. App’x 298, 300 (5th Cir. 2019) (per curiam) (quoting *Hulsey v. Texas*, 929 F.2d 168, 171 (5th Cir. 1991) (quoting, in turn, *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. Nov. 1981))).

A Rule 41(b) dismissal may be with or without prejudice. *See Long v. Simmons*, 77 F.3d 878, 879-80 (5th Cir. 1996).

Although “[l]esser sanctions such as fines or dismissal without prejudice are usually appropriate before dismissing with prejudice, ... a Rule 41(b) dismissal is appropriate where there is ‘a clear record of delay or contumacious conduct by the plaintiff and when lesser sanctions would not serve the best interests of justice.’”

Nottingham, 837 F.3d at 441 (quoting *Bryson v. United States*, 553 F.3d 402, 403 (5th Cir. 2008) (per curiam) (in turn quoting *Callip v. Harris Cnty. Child Welfare Dep’t*, 757 F.2d 1513, 1521 (5th Cir. 1985))); *see also Long*, 77 F.3d at 880 (a dismissal with

prejudice is appropriate only if the failure to comply with the court order was the result of purposeful delay or contumacious conduct and the imposition of lesser sanctions would be futile); *cf. Nottingham*, 837 F.3d at 442 (noting that “lesser sanctions” may “include assessments of fines, costs, or damages against the plaintiff, conditional dismissal, dismissal without prejudice, and explicit warnings” (quoting *Thrasher v. City of Amarillo*, 709 F.3d 509, 514 (5th Cir. 2013))).

“When a dismissal is without prejudice but ‘the applicable statute of limitations probably bars future litigation,’” that dismissal operates as – i.e., it is reviewed as – “a dismissal with prejudice.” *Griggs*, 905 F.3d at 844 (quoting *Nottingham*, 837 F.3d at 441); *see, e.g., Wright*, 754 F. App’x at 300 (affirming dismissal under Rule 41(b) – potentially effectively with prejudice – where “[t]he district court had warned Wright of the consequences and ‘allowed [her] a second chance at obtaining service’” but she “disregarded that clear and reasonable order”).

By not filing an amended complaint by May 22, 2020, as ordered, Spriggs has prevented this action from proceeding and has thus failed to prosecute her lawsuit. A Rule 41(b) dismissal of this lawsuit without prejudice is warranted under these circumstances.

The undersigned concludes that lesser sanctions would be futile, as the Court is not required to delay the disposition of this case until such time as Spriggs decides to obey the Court’s order or contact the Court.

The Court should therefore exercise its inherent power to prevent undue delays in the disposition of pending cases and *sua sponte* dismiss this action without

prejudice.

Recommendation

The Court should dismiss this action without prejudice under Federal Rules of Civil Procedure 41(b).

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: August 27, 2020



DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE